

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**TERSELA T. KUNTZELMAN and
DONALD G. KUNTZELMAN as
Co-Guardians and Next Friends of
EMMA TORRES,**

Plaintiffs,

vs.

Civ. No. 07-0819 MV/RLP

**WAL-MART STORES, EAST INC., and
WAL-MART STORES, INC.,**

Defendants.

MEMORANDUM OPINION AND ORDER

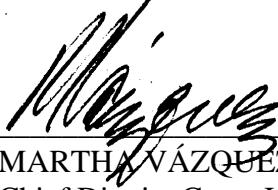
THIS MATTER comes before the Court on the Parties' Stipulation of Dismissal With Prejudice, filed June 3, 2008, [Doc. No. 13]. The parties seek a dismissal of this case on the grounds that the parties have settled all matters in dispute. This matter is brought by Plaintiffs Tersela T. Kuntzelman and Donald G. Kuntzelman, as co-guardians and next friends of Emma Torres. While not stated in the record, the Court presumes that Ms. Torres is represented by her co-guardians and next friends because she is incompetent. An incompetent person's suit cannot be ended upon settlement followed by the filing of a stipulation of dismissal. *See, e.g., Crawford v. Loving*, 84 F.R.D. 80 (E.D. VA 1979). The Court has an inherent duty to protect the interests of minors and incompetents that come before it. *See, e.g., Dacanay v. Mendoza*, 573 F.2d 1075, 1079 (9th Cir.1978) ("It is an ancient precept of Anglo-American jurisprudence that infant and other incompetent parties are wards of any court called upon to measure and weigh their interests."). Pursuant to this duty, the Court must determine whether a proposed settlement is in

the best interests of the minor or incompetent.

IT IS THEREFORE ORDERED that a fairness hearing on the proposed settlement will be held on Thursday, July 17, 2008 at 1:30 p.m. at the Santiago E. Campos United States Courthouse in Santa Fe, New Mexico.

IT IS FURTHER ORDERED that the parties provide a copy of the proposed settlement to the Court within five days of the date of this Order.

DATED this 10th day of June, 2008.



MARTHA VÁZQUEZ
Chief District Court Judge